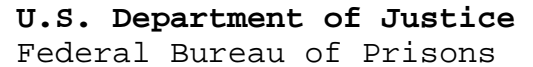


PS3713.17 DISCRIMINATION AND RETALIATION COMPLAINTS PROCESSING



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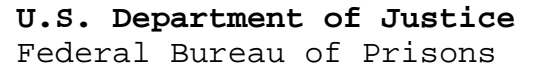
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- ### 3. TABLE OF CHANGES

Insert

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Chapter 6, Pages 1 and 2

- /s/
Kathleen M. Hawk
Director



Program Statement

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c. Time frames established for each step in the complaint resolution process will be met.

d. CEOs will promote culturally diverse work environments free of discrimination, including sexual harassment, and ensure the local program's operation.

e. Notification of this policy will be given to each employee through bulletin board postings and distribution of written information about the policy.

3. DIRECTIVES AFFECTED

a. Directives Rescinded

P.S. 3713.11 Sexual Harassment Prevention Program
(10/15/87)

b. Directives Referenced

P.S. 1330.13 Administrative Remedy Program (12/22/95)
P.S. 3000.02 Human Resource Management Manual (11/01/93)
P.S. 3713.15 Affirmative Action Program (07/13/94)
P.S. 3420.08 Standards of Employee Conduct (03/07/96)

5 U.S.C. § 552a(b)(1)
Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000e et seq.)
The Age Discrimination in Employment Act of 1967, as amended (29 U.S.C. § 621 et seq.)
The Rehabilitation Act of 1973, as amended (29 U.S.C. § 791 et seq.)
Fair Labor Standards Amendments of 1974 and 1978
Civil Service Reform Act of 1978

Executive Order 11478, as amended
Executive Order 12731

Title 5 C.F.R. Part 720; and Part 1201, Subpart D
Title 28 C.F.R. Part 39
Title 28 C.F.R. Part 42, Subpart A
Title 29 C.F.R. Part 33
Title 29 C.F.R. Parts 1604, 1605, 1606, 1614, 1625 and 1626

Master Agreement between the Federal Bureau of Prisons and the Council of Prison Locals (09/01/92 - 08/31/95)

4. STANDARDS REFERENCED

a. American Correctional Association 3rd Edition Standards for Adult Local Detention Facilities: C2-5049

b. American Correctional Association 2nd Edition Standards for Administration of Correctional Agencies: 2-CO-1C-11

5. ACTION REQUIRED

a. Each Chief Executive Officer (CEO) (Regional Director, Assistant Director, Warden, Staff Training Center Director) will ensure a culturally diverse work environment free of discrimination, including sexual harassment. Additionally, he/she will ensure that the operation of the local Equal Employment Opportunity (EEO) Program is consistent with the procedures outlined in this Program Statement. Each CEO is responsible for maintaining official bulletin boards in locations easily accessible to all staff notifying them of the following information:

- (1) The names, titles, telephone numbers and locations of the EEO Counselors;
- (2) Procedures for filing an individual or class complaint of employment discrimination; and
- (3) Procedures for filing a complaint of discrimination on the basis of disability in programs or activities conducted by the Department of Justice.

b. Each CEO will provide sufficient resources and support to implement the EEO complaints program as specified in this Program Statement, including:

- (1) Making reasonable accommodations for the known disabilities and religious needs of applicants and employees; and
- (2) Ensuring that no person is retaliated against or harassed because of participation in the EEO complaints process or because of opposition to a policy or practice which the person believes is discriminatory.

c. Each CEO will implement the Bureau's Sexual Harassment Prevention Plan by:

- (1) Ensuring that no person is subjected to sexual harassment in the workplace, either by a request for sexual favors or by a sexually harassing work environment.
- (2) Notifying all employees and posting permanently on official bulletin boards the names, titles, telephone numbers, and addresses of the contact persons designated by the Sexual Harassment Prevention Program.
- (3) Notifying all employees by posting on official bulletin boards the procedures for contacting a contact person who conducts an inquiry into allegation(s) of sexual

harassment and the time limits for the inquiry.

d. Management and supervisory staff will work toward an environment which is fair and free of discrimination and retaliation by neither practicing discrimination nor tolerating discriminatory behavior or practices.

6. DISTRIBUTION. All Bureau CEOs will ensure that each current employee and new employee in their organizational units shall have access to this Program Statement.

\s\

Kathleen M. Hawk
Director

CHAPTER 1

EEO COUNSELING PROGRAM

1. NUMBER OF EEO COUNSELORS

Each institution, Regional Office, and the Central Office will have at least two trained EEO Counselors. These Counselors will make efforts to resolve discrimination complaints during the informal, pre-complaint stage.

2. RESPONSIBILITIES

a. The Equal Employment Opportunity Officer for the Bureau of Prisons is responsible for:

- (1) selecting and appointing EEO Counselors;
- (2) informing EEO Counselors of policy changes;
- (3) providing technical assistance to EEO Counselors; and
- (4) identifying training needs of EEO Counselors and developing training programs to meet these needs.

b. EEO Counselors are responsible for:

(1) serving as a liaison between management and employees to attempt to resolve problems informally;

(2) submitting monthly, pre-complaint counseling reports to the EEO Officer;

(3) submitting a formal Report of Counseling and a copy of the signed and dated Notice of Right to File a Discrimination Complaint Form to:

- i. the complainant within 15 days after a formal complaint is filed; and
- ii. the EEO Officer if a formal complaint is filed or if the counseling continued for at least 30 days;

(4) interviewing aggrieved persons who come to the EEO Counselor with problems, as well as others who are involved in the inquiry, and maintaining an impartial and objective attitude toward the matters under discussion;

(5) making every possible effort to resolve complaints informally by conducting a thorough inquiry into the matters brought to them and trying to resolve issues in the complaint with the aggrieved person and management; and

(6) maintaining the confidentiality of privileged information from personnel or other employees' records.

c. Management is responsible for:

(1) Providing opportunities and resources for EEO Counselors to perform their duties, including training, official time, and space;

(2) Maintaining bulletin boards to inform employees and applicants of the names of responsible EEO Officials and of the time limits for filing complaints;

(3) Ensuring that EEO Counselors are free from restraint, coercion, discrimination, and reprisal during, or because of, their counseling activities; and

(4) Making available to the EEO Counselor all documents and information pertinent to the complaint for review in their attempt(s) to informally resolve the complaint. These documents include official personnel files, promotion board packages, all performance records, lieutenants' logs, and any other material relevant to the complaint. In their official positions as EEO Counselors, they shall have routine access to these records and thereafter, pursuant to 5 U.S.C. § 552a (b)(1), such access does not constitute an unwarranted invasion of privacy.

3. SELECTION OF COUNSELORS

a. Vacancies. An EEO Counselor position is a collateral-duty, and the Counselor is expected to spend no more than 20 percent of his or her on-duty time counseling. When there is an EEO Counselor vacancy or when a new Counselor position is established, a local employment vacancy announcement will be issued and posted, enabling all employees at the facility to apply. The announcement should emphasize that this position is a collateral-duty and has no known promotion potential. However, the job will provide the applicant with the opportunity to increase skills such as problem-solving, listening skills, and mediation. The employee's duties as an EEO Counselor will be included in his or her position description. Experience gained can be credited when applying for other positions.

b. Qualifications. Applicants must have a minimum of one year of service with the Federal Bureau of Prisons and should submit a resume stating their qualifications and reasons for applying. Applicants should understand that, if selected, they will be expected to serve as an EEO Counselor for two years. Because Counselors must maintain the confidence of both employees and management, the Equal Employment Opportunity Commission (EEOC) requires that persons who ordinarily represent employees for other reasons should not be designated as EEO Counselors. Also,

any person who serves as an EEO Counselor should not serve as a representative for any employee at any stage of the

discrimination complaint process, nor should he or she serve as a management representative or advisor in the complaint process.

c. Selection Panel. The CEO will appoint a selection panel consisting of: an Affirmative Action Committee Chairperson, an EEO Counselor, a Special Emphasis Program Manager, a Union representative, and the Human Resource Manager. The selection panel will review the applications and submit a list of no more than five names to the CEO.

d. Selection. The CEO will forward the nominations and the supporting documentation to the EEO Officer in the Central Office, indicating his or her recommendation for selection. The EEO Officer will select the EEO Counselor and notify the CEO of the selection.

e. Training. No one shall serve as an EEO Counselor until he or she has received formal training, either from the Bureau or the Office of Personnel Management. The local Employee Development Manager or the EEO Office in the Central Office can verify if a Counselor has received training.

4. REMOVAL, RESIGNATION, AND TRANSFER OF EEO COUNSELORS

a. Removal. Only the EEO Officer may remove a counselor from his or her duties as an EEO Counselor for any of the following reasons:

(1) Abusing his or her access to privileged information, such as that in personnel records;

(2) Refusing to counsel an employee for reasons other than a clear conflict of interest; having an unusually heavy counseling load; or having not received training as an EEO Counselor; or

{If the EEO Counselor is unable to counsel the employee for any of the above reasons, he or she should consult with another EEO Counselor at the facility and refer the employee to that Counselor. When there are no other Counselors available, the Counselor will consult with the EEO Officer concerning the appointment of another Counselor.}

(3) Engaging in an activity which is contrary to the EEOC's regulations and directives or which would affect his or her neutrality as an EEO Counselor.

b. Resignation. If an employee cannot continue to serve as a Counselor, he or she will submit his or her resignation in writing to the EEO Officer, with a copy to the CEO.

The EEO Counselor serves in this capacity as a collateral-duty,

and is expected to spend no more than 20 percent of his or her on-duty time counseling complainants. If the Counselor's time

spent counseling interferes with the Counselor's accomplishing the objectives of his or her full-time position, the Counselor or the CEO should contact the EEO Officer in the Central Office regarding this conflict. The Counselor may be placed in an inactive status until the conflict is resolved.

c. Transfer. If a Counselor is transferred to another facility, he or she will inform the EEO Officer so that a determination can be made as to whether the Counselor may continue to serve as a Counselor at the receiving facility.

5. SUPERVISION OF EEO COUNSELORS

a. An EEO Specialist in the Central Office under the direction of the EEO Officer, will provide direct supervision to the EEO Counselors at every Bureau location. The Specialist provides technical guidance to the Counselors on an as-needed basis, and keeps the EEO Officer apprised of all EEO counseling activity.

b. In addition to providing technical counseling advice to the EEO Counselors, the EEO Specialist is responsible for monitoring the monthly counselor's reports, which each Counselor submits, and for providing training to the EEO Counselors.

c. EEO Counselors may attend open meetings of the Affirmative Action Committee at their location; however, they are not required to attend.

CHAPTER 2

INDIVIDUAL COMPLAINTS OF DISCRIMINATION

1. FILING AND PRESENTATION OF AN INDIVIDUAL COMPLAINT

a. Notification. An applicant or employee who wishes to file a complaint of discrimination must contact a local EEO Counselor within 45 days of the alleged discriminatory event or personnel action, or the time when he or she knew or should have known of the discriminatory event or personnel action. If an EEO Counselor is not available, the aggrieved individual should contact either the local Human Resource Manager, the local CEO, or the EEO Officer in the Central Office. The EEO Officer will assign an EEO Counselor and provide the necessary resources if travel from one location to another is involved.

* Employees may request an alternate EEO Counselor where a conflict of interest exists. A conflict of interest may include, but is not limited to, situations in which the complaint concerns the existing EEO Counselor's immediate supervisor or where the employee seeking counseling is a high-ranking management employee and the existing counselor is of significantly lower rank. Such requests must be made to the Bureau's EEO Office in Washington, DC, which retains the right to approve or deny any such request. Denial of an alternate counselor does not prohibit the employee from pursuing the claim through the existing counselor. *

b. Counseling/Informal Resolution. The EEO Counselor has 30 days from the date of initial contact to counsel the applicant or employee and attempt informal resolution of a complaint of discrimination or retaliation. (The EEO Officer may grant an extension of up to 60 days with the agreement, in writing, of the aggrieved party, who is seeking counseling.)

The EEO Counselor will also advise the aggrieved person that they may use the Alternate Dispute Resolution (ADR)/Mediation Program of the U.S. Department of Justice during the counseling process. Unless the aggrieved person has agreed to a 60-day extension of counseling, or has requested ADR/Mediation, at the conclusion of the 30-day period the EEO Counselor will issue a Notice of Right to File a Discrimination Complaint and a complaint of discrimination form to the aggrieved party. The Notice of Right to File informs the aggrieved individual that he or she has 15 days from receipt of the notice to file a formal complaint of discrimination, and the names of those persons authorized to receive complaints.

c. Filing of Formal Complaint. It is the complainant's

responsibility, not the counselor's, to file a formal complaint with the appropriate official(s). The EEO Counselor may offer

his or her assistance to the complainant in completing the complaint form. The complainant or his or her representative must submit the formal complaint in writing, signed by the complainant, to the appropriate official(s) authorized to receive formal complaints of discrimination. The appropriate officials authorized to receive complaints of discrimination are the Attorney General (head of the agency), the Director of EEO for the Department of Justice (Assistant Attorney General for Administration), the Director of the Federal Bureau of Prisons, local CEO, or the EEO Officer for the Federal Bureau of Prisons.

All formal complaints will be transmitted to the EEO Officer for processing immediately upon receipt. A complaint is deemed filed on the date it is received. If the complaint is mailed, a determination on the timeliness of the filing of the complaint will be made based on the date that the complaint was postmarked or sent by facsimile (FAX).

d. Acknowledgement of Complaint. The EEO Officer or his or her designee will send a letter acknowledging receipt of the formal complaint to the complainant or his or her designated representative. The acknowledgement letter will advise the complainant of his or her rights in the administrative processing of the complaint and the right (for complainants alleging discrimination because of race, color, religion, sex, national origin, age or disability) to file a civil action, including the time limits imposed on the exercise of these rights.

e. Time Extensions. The EEO Officer may extend the time limits for filing a formal complaint for good cause shown, such as if the complainant can show that he or she was not notified or otherwise aware of the time limits; was prevented by circumstances beyond his or her control from submitting the matter within the time limits; or for other reasons the EEO Officer considers sufficient.

g. Representation. A complainant is entitled to a representative of his or her choice at all stages of the processing of a complaint of discrimination, including the counseling stage. When the complainant's representation would conflict with the representative's official or collateral duties, the representative may be disqualified.

h. Official Time. If management, the complainant, or the representative have questions regarding the reasonable amount of official time to present a specific complaint, they should consult with the Bureau's EEO Officer to resolve any conflicting situations.

(1) If the complainant is a Bureau employee, he or she will have a reasonable amount of official time to present the complaint, if on duty. A reasonable amount of official time is

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defined as whatever is appropriate for the particular circumstances of the complaint, in order to allow a complete presentation of the relevant and material information associated with the complaint, with the required specificity and detail, to the appropriate Bureau and EEOC officials. The actual number of hours to which the complainant or his or her representative are entitled will vary, depending on the nature and complexity of the complaint, and considering the agency's mission and the agency's need to have its employees available to perform their duties on a regular basis. A reasonable amount of official time is usually defined in minutes and hours, not days and weeks.

(2) If the complainant is a Bureau employee and he or she designates another Bureau employee as his or her representative, the representative will have a reasonable amount of official time, if on duty, to present the complaint. The Bureau is not

obligated to change work schedules, incur overtime wages, or pay travel expenses to facilitate the choice of a specific representative or to allow the complainant and representative to confer. However, if both the complainant and representative are Bureau employees and otherwise in a pay status, they will be on official time, regardless of their tour of duty, when the Bureau or the EEOC authorizes or requires their presence during the investigation, informal adjustment, or hearing on the complaint.

2. DISMISSAL OF A COMPLAINT

a. The EEO Officer will recommend to the Director of the EEO Staff for the Department of Justice the dismissal of a complaint of discrimination that:

(1) Fails to state a claim, i.e., the action being complained of must be based on a term or condition of employment for which there is a specific remedy and the aggrieved individual believes that the action is based on race, color, religion, sex, national origin, age, physical or mental disability, retaliation or sexual orientation;

(2) States the same claim that is pending before or has been decided by the agency;

(3) Alleges that a proposed action may be discriminatory;

(4) Is the basis of a pending civil action in a U.S. District Court in which the complainant is a party;

(5) Is filed untimely, unless the EEO Officer has extended the time limits in accordance with 29 C.F.R. § 1614.604(c);

(6) Is pursued by the complainant under the negotiated grievance procedure in the Master Agreement Between the Federal Bureau of Prisons and the Council of Prison Locals or in an appeal to the Merit Systems Protection Board;

(7) Was not prosecuted by the complainant. Before a recommendation is made to dismiss the complaint for failure to prosecute, the EEO Officer shall provide the complainant with a notice that a recommendation will be made that the complaint will be dismissed if certain pertinent information is not received or unless the complainant agrees to otherwise proceed with the complaint; or

(8) Was recommended for resolution but the complainant refuses to accept, within 15 days of receipt, an offer of full relief in adjustment of the complaint, provided that the Director

of the EEO Staff, Department of Justice (DOJ), has certified in writing that the Bureau's written offer of relief constitutes full relief.

b. On behalf of the Assistant Attorney General for Administration, the Director of the EEO Staff, Department of Justice, shall review the EEO Officer's recommendation and inform the complainant or his or her representative of the final agency decision and the right to appeal the decision to the EEOC, the right to file a civil action, and the applicable time limits involved.

3. INVESTIGATION

a. A complainant and his or her representative will be informed in writing of the issue(s) that have been accepted for processing and the assignment of an EEO Investigator. The CEO will also be informed in writing of the complaint and the name of the EEO Investigator assigned, with a request that all relevant documents be held for the EEO Investigator. The CEO will also be advised to retain the necessary records regarding the circumstances surrounding the complaint. These records will be retained locally unless the EEO Officer directs otherwise.

b. The EEO Officer will identify the issues in the complaint that are accepted and will be investigated. The Director, through the EEO Officer, authorizes the EEO Investigator to:

(1) Investigate all aspects of formal complaints of discrimination;

(2) Require all employees of the agency to cooperate with the EEO Investigator in the conduct of the investigation; and

(3) Require employees of the agency having knowledge of the matter complained of to furnish testimony under oath or affirmation without a pledge of confidentiality.

c. In the Bureau, EEO Investigators are full-time positions in the Office of General Counsel, and they report to a Supervisory EEO Specialist who is directly responsible to the EEO Officer.

d. In cases of an appearance of a conflict of interest, such as complaints against the entire Executive Staff, the complaint may be assigned by the EEO Officer to a contract outside investigator or may be sent to the Director of the EEO Staff, U.S. Department of Justice for assignment to the EEO Officer of another agency for processing.

e. The EEO Investigator will conduct a thorough review of the circumstances in which the alleged discrimination occurred.

f. The EEO Investigator will advise management at the local

facility of the date of the investigation and the clerical support and space needs. The Bureau shall provide space for conducting the investigation. When possible, the EEO Investigator will provide management, in advance, with a list of persons to be interviewed. Employees the EEO Investigator needs to interview will be on official time during the interview.

g. The EEO Investigator will advise management of the required documents to be provided. Other than receiving guidance from the EEO Complaints Section, EEO Investigators shall exercise independent judgment in gathering information and determining who should be interviewed. Investigations of complaints of discrimination are official investigations; therefore, the elements of the Program Statement on Standards of Employee Conduct and Responsibility apply.

h. The EEO Investigator is authorized to conduct fact finding/mediation at any time while conducting the investigation when the Supervisory EEO Specialist directs or if it appears during the investigation that the complaint can be informally resolved. If the complaint is resolved, the terms of the settlement shall be put in writing and signed by the complainant, the CEO or his or her designee, the EEO Investigator, and the EEO Officer. This settlement is binding on the parties.

i. After completing the investigation, the EEO Investigator will forward the investigative file to the Supervisory EEO Specialist. A copy of the investigative file will be sent by the EEO Officer to the complainant within 180 days of the date the complaint is filed. This time period may be extended up to 90 days with the complainant's approval. Copies of the investigative file are routinely provided by the EEO Officer only to the complainant and his or her attorney.

4. SETTLEMENT OF COMPLAINTS

a. Settlement of complaints of discrimination can occur at any stage of the process. After the completion of the investigation, the complainant may be provided an opportunity to discuss the investigative file and settlement of the complaint with an appropriate staff member in the EEO Complaints Section, if settlement is attempted.

b. The complainant's proposal for settling his or her complaint shall be presented for approval to the appropriate management official by the EEO Officer, who may also recommend terms of settlement to both parties. If management officials agree to the terms the EEO Office has presented, the EEO Officer shall obtain approval of the settlement offer from the General Counsel and the Director of the Federal Bureau of Prisons. The approved terms will be presented to the complainant as the agency's offer for settlement.

c. If settlement is reached, the terms of the settlement shall be in writing. The complainant and his or her representative, the appropriate management official(s), and the EEO Officer will

sign the settlement agreement and it will be made part of the complaint file.

d. The settlement agreement will be binding on both the complainant and the Bureau. If the complainant believes that the Bureau has failed to comply with the terms of the settlement agreement, the complainant must notify the Director of EEO for the Department of Justice, and the EEO Officer for the Bureau, in writing, of the alleged noncompliance with the settlement agreement, within 30 days of when the complainant knew or should have known of the alleged noncompliance. The remainder of the regulations for enforcing compliance with settlement agreements are found at 29 C.F.R. § 1614.504.

5. RIGHTS OF APPEAL

a. If settlement of the complaint is not reached, the EEO Officer will provide the complainant with a letter outlining his or her rights of appeal, along with a copy of the investigative report. For complainants alleging discrimination because of race, color, religion, sex, national origin, age, or disability, these rights of appeal consist of the complainant's right to a hearing conducted by an Administrative Judge from the EEOC, or a final agency decision by the Complaint Adjudication Officer, U.S. Department of Justice, or the right to file a civil action in an appropriate U.S. District Court.

b. If the complainant does not request a hearing within 30 days after receiving the investigative file and the issuance of the notice of rights of appeal, the complaint file will be forwarded to the Complaint Adjudication Officer (CAO) for final agency decision on behalf of the Attorney General.

c. In complaints alleging discrimination because of sexual orientation, after the complainant is given a copy of the investigative file, an attempt will be made to settle the complaint. If settlement is not possible, the complete complaint file will be sent to the Complaint Adjudication Officer for a final agency decision on behalf of the Attorney General.

6. HEARING

a. If the complainant requests a hearing, the request must be made in writing to the EEO Officer within 30 days after receiving the investigative file. When a request for a hearing is received from the complainant or his or her representative, the EEO Officer will send the request, along with the complaint files, to the EEOC.

b. The EEOC will arrange for an Administrative Judge to conduct the hearing and will advise the Bureau and the complainant of the location and time.

c. The Labor Law Branch, Office of General Counsel, will designate the attorney who will represent the Bureau at the hearing. The EEO Complaints Section will provide the Labor Law Branch with the files in the complaint of discrimination.

d. The Bureau will bear the expenses for travel of the Bureau's witnesses, as well as those of all witnesses who are federal government employees, and the complainant, if he or she is a federal government employee; and the expense of a court reporter.

e. The Administrative Judge has the authority to call the appropriate witnesses after reviewing the complaint file and consulting with the complainant and the agency representative. The Administrative Judge sends a Recommended Decision, along with the hearing transcript and the complaint file, to the CAO for a final agency decision.

7. FINAL AGENCY DECISION

a. The complaint files will be forwarded by the EEO Officer to the CAO for final agency decision within 30 days after the complainant's receipt of the investigative file, if the complainant does not request a hearing, or in cases alleging discrimination because of sexual orientation. When the complainant requests a hearing, the procedures outlined above shall be followed.

b. The CAO makes the final agency decision (FAD) on behalf of the Attorney General. If there has been a hearing, the FAD is issued within 60 days after the CAO receives the Recommended Decision and the complaint file from the Administrative Judge. In accordance with 29 C.F.R. Part 1614, an agency does not have any appeal rights from this decision. If the CAO finds discrimination or retaliation, remedial relief may be ordered.

c. When discrimination is found, the EEO Officer will take the necessary steps to assist the institution's staff to implement the remedial relief ordered. The EEO Officer is required to report to the CAO within 90 days of receipt of the final agency decision the status of any action taken to implement the remedial relief. The EEO Officer will also further advise the CAO of steps taken until full implementation of the relief is accomplished.

8. APPEALS TO THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

a. The complainant may appeal to the EEOC:

(1) A final agency decision on the merits of the complaint by the CAO;

(2) Dismissal of a complaint or any portion of a complaint, by the Director of the EEO Staff, Department of Justice;

(3) The alleged failure of the Federal Bureau of Prisons to comply with the terms of a settlement agreement, following the procedures outlined in 29 C.F.R. § 1614.504; or

(4) A decision by the CAO on the merits of the complaint, on the award of attorney fees or costs, or on compensatory damages.

b. A complainant may appeal to the EEOC on issues of employment discrimination raised in a negotiated grievance procedure such as the Master Agreement between the Federal Bureau of Prisons and the Council of Prison Locals. A complainant may appeal issues of discrimination in the decision of:

(1) The agency head or designee on the grievance;

(2) The arbitrator on the grievance; or

(3) The Federal Labor Relations Authority (FLRA) on exceptions to the arbitrator's award.

c. A complainant may not appeal under this section when the matters initially raised in the negotiated grievance procedure is still ongoing in that process, is in arbitration, or is before the Federal Labor Relations Authority.

d. The complainant must file his or her appeal in writing, either personally or by mail, with the Director, Office of Federal Operations, EEOC, within 30 days of his or her receipt of the final agency decision.

e. After receiving the EEOC's request for the complainant's file, the EEO Officer shall send the record to EEOC within 30 days of receiving the request.

9. RIGHT TO FILE A CIVIL ACTION

a. An employee or applicant is authorized by § 717(c) of the Civil Rights Act of 1964, as amended, and 29 C.F.R. § 1614.408 and 1614.409 to file a civil action in an appropriate U.S. District Court:

(1) Within 90 calendar days after receipt of final action taken by the agency on a complaint;

(2) After 180 calendar days from the date of filing a formal, written complaint with the agency if there has been no final agency decision;

(3) Within 90 calendar days after receipt of final action taken by the EEOC on the complaint; or

(4) After 180 calendar days from the date of filing an

appeal with the EEOC, if there has been no decision.

b. Under Section 16(b) of the Fair Labor Standards Act, 29 U.S.C. § 216(b), a complainant is authorized to file a civil action in U.S. District Court within two years or, if the violation is willful, three years of the date of the alleged violation of the Equal Pay Act, regardless of whether he or she has pursued any administrative complaint processing. Recovery of back wages is limited to two years prior to the date of filing suit, or to three years if the violation is deemed willful. Liquidated damages in an equal amount may also be awarded. The filing of an administrative complaint, or an appeal with EEOC, shall not toll the time for filing a civil action.

c. The filing of a civil action by an employee or applicant involving a complaint filed under these procedures terminates administrative processing of that complaint.

10. PROCESSING AGE DISCRIMINATION COMPLAINTS

Unlike complaints filed under Title VII of the Civil Rights Act of 1964, as amended, and the Rehabilitation Act of 1973, as amended, age discrimination complainants may elect to bypass the administrative complaint process described above and in 29 C.F.R. Part 1614, and file a civil action directly in an appropriate U.S. District Court, after first filing a written notice of intent to file a civil action with the EEOC, as further described below.

a. If an aggrieved person elects to bypass the administrative process and file a civil action alleging age discrimination directly in a U.S. District Court, he or she must, within 180 calendar days of the date the alleged discrimination occurred, file a written notice with the EEOC of intent to file a civil action. Once a written notice of intent to file a civil action has been filed with the EEOC, the aggrieved person must then wait at least 30 calendar days before filing the civil action in an appropriate U.S. District Court.

b. If an aggrieved person elects to file an administrative complaint under the individual complaint procedures described above and in 29 C.F.R. Part 1614, rather than filing directly in federal court, he or she must exhaust his or her administrative remedies before filing a civil action.

c. The limitation period for filing a civil action based on age discrimination in Federal District Court varies by court jurisdiction. For example, some courts have applied a two or three-year limitation period while others have applied a six-year limitation period. Some courts have held that the same limitation period which is applicable to Title VII complaints

applies. The complainant and his or her representative should determine from the local U.S. District Court the required time limits in their legal jurisdiction.

11. RELATIONSHIP TO NEGOTIATED GRIEVANCE PROCEDURE

a. When a person who is employed by an agency, such as the Federal Bureau of Prisons, which is subject to 5 U.S.C. § 7121(d) and is covered by a collective bargaining agreement which permits allegations of discrimination to be raised in a negotiated grievance procedure, that person wishing to file a complaint or a grievance on a matter of alleged employment discrimination must elect to raise the matter under either the EEO complaint procedures or the negotiated grievance procedure, but not both.

b. An election to proceed under the EEO complaint procedures is indicated only by filing a formal, written complaint with the EEO Officer; use of the pre-complaint counseling process does not constitute an election to proceed under the complaint procedures. A person who files a formal EEO complaint may not thereafter file a grievance on the same matter.

c. An election to proceed under the negotiated grievance procedure is indicated by the filing of a timely, written grievance.

d. According to 29 C.F.R. § 1614.301, an aggrieved employee who files a grievance with an agency whose negotiated agreement permits the acceptance of grievances alleging discrimination may not thereafter file a complaint on the same matter under these complaint procedures, irrespective of whether the Bureau has informed the individual of the need to elect or of whether the grievance has raised the issue of discrimination. Any such complaint filed after a grievance has been filed on the same matter shall be dismissed without prejudice to the complainant's right to proceed through the negotiated grievance procedure, including the right to appeal any issue of discrimination in a final decision on the grievance to EEOC. The dismissal of such a complaint shall advise the complainant of the obligation to raise discrimination in the grievance process and of the right to appeal the final grievance decision to the Commission.

CHAPTER 3

MIXED CASE COMPLAINT PROCEDURES

1. MIXED CASE COMPLAINT

a. A mixed case complaint is an employment discrimination complaint filed with a Federal agency, based on race, color, religion, sex, national origin, disability, age, or reprisal, related to or stemming from an action the agency took against the complainant, which may also be appealed to the Merit Systems Protection Board (MSPB). These actions are listed in 29 C.F.R. § 1614.302 and include:

(1) Denial of restoration after recovery from compensable injury of an excepted service employee;

(2) Termination during probation if alleging discrimination because of marital status or political persuasion;

(3) Certain involuntary reassignments or demotions connected with conversions to the Senior Executive Service;

(4) Improper application of re-employment priority rights;

(5) Reduction-in-force;

(6) Denial of re-employment rights under various circumstances;

(7) Denial of restoration following military duty; recovery of competitive service employees from certain injuries;

(8) Reduction-in-grade and removal based on unacceptable performance;

(9) Denial of within-grade increases; or

(10) Adverse suitability determinations.

b. A mixed case appeal is an appeal filed with the MSPB which involves a matter over which the MSPB has jurisdiction and which alleges that the agency action which is the basis for the appeal was affected, in whole or in part, because of discrimination on the basis of race, color, religion, sex, national origin, disability, age, or reprisal, or alleges that such appealable action resulted in sex-based wage discrimination.

2. FILING AND PROCESSING A MIXED COMPLAINT

An aggrieved person may initially file a mixed case complaint with the Federal Bureau of Prisons, or he or she may file a mixed case appeal directly with the MSPB, but not both. The person will be advised that he or she may not initially file both and

that whichever is formally filed in writing first (the mixed case complaint or the appeal) shall be considered an election to proceed in that forum.

3. DISMISSALS

a. Whenever an agency is presented with a mixed case complaint concerning an action that has previously been appealed by the complainant to the MSPB, the EEO Officer will recommend dismissal of the complaint. The Director of the EEO Staff, Department of Justice, shall advise the aggrieved person, as part of the decision dismissing such a complaint, that he or she must bring the allegations of discrimination contained in the dismissed complaint to the attention of the MSPB within 30 calendar days.

b. Whenever the EEO Officer learns that a mixed case complaint, which has been filed with and accepted by the agency, contains issues that also form the basis of an appeal which has been filed with the MSPB, it must determine which was filed first. If the appeal to the MSPB was filed first, the EEO Officer shall recommend dismissal (in writing) of the portion of the mixed case complaint related to the action appealed to the MSPB. The Department of Justice will advise the complainant, as part of the decision which dismisses the complaint, that he or she must bring the allegation to the MSPB's attention within 30 calendar days.

If the mixed case complaint was filed first, the EEO Officer will advise the MSPB and request that the MSPB dismiss the appeal without prejudice; thereafter, the agency will process the complaint and issue a final agency decision within 120 calendar days. The EEO Officer may also recommend dismissal of a mixed case complaint when he or she learns that the complainant has chosen to appeal the matter to the MSPB upon expiration of 120 calendar days from the date that the mixed case complaint was filed with the Bureau.

c. When a complainant elects to proceed with the mixed case complaint, the complaint shall be processed in a manner similar to individual complaints of discrimination or retaliation, with the following exceptions:

(1) There will be no hearing before an EEOC Administrative Judge;

(2) If no final agency decision is issued within 120 calendar days of the date of filing of the mixed case complaint, the complainant may appeal the matter to the MSPB at any time thereafter, up to, but not later than one year from the filing of

the complaint, or may file a civil action in U.S. District Court;
and,

(3) If the complainant is dissatisfied with the Department of Justice's decision on the mixed case complaint, he or she may appeal the matter to the MSPB (not the EEOC), within 30 calendar days of receiving the Department's decision, in accordance with 5 C.F.R. § 1201.22(b).

4. RIGHTS OF APPEAL

When the agency issues the investigative file to the complainant, the agency shall advise the complainant that:

a. He or she may request a decision from the head of the agency or his or her designee, without a hearing and thereafter appeal that decision to the MSPB (not the EEOC), and in connection, request a hearing within 30 calendar days of receipt of the Department's decision; or

b. If a final agency decision is not issued within 120 calendar days of the date of filing the mixed case complaint, he or she may appeal the matter to the MSPB at any time thereafter, or may file a civil action, but not both.

5. FINAL AGENCY DECISION

When the CAO issues his or her final agency decision on a mixed case complaint, the Department shall advise the complainant of his or her right to appeal the matter to the MSPB (not the EEOC), within 30 calendar days of receipt of the final agency decision, and of his or her right to file a civil action in U.S. District Court.

CHAPTER 4

CLASS COMPLAINTS OF DISCRIMINATION PROCEDURES

1. FILING AND PRESENTATION OF A CLASS COMPLAINT

a. Any employee or applicant for employment in the Federal Bureau of Prisons who believes that he or she has been adversely affected by a policy or practice of the Bureau which allegedly discriminates against a group on the basis of their common race, color, religion, sex, national origin, age, or physical or mental disability, may file a class complaint of discrimination as the class agent. A class complaint is a written complaint of discrimination filed on behalf of a class by its agent in which:

(1) A class is so numerous that a consolidated complaint of its members is impractical;

(2) There are questions of law and fact common to the class and the agent;

(3) The claims of the agent are typical of the claims of the class; and

(4) The agent or representative, if any, will fairly and adequately represent the interests of the class.

b. An employee, former employee, or applicant who wishes to be an agent of a class and who believes he or she has been discriminated against must consult an EEO Counselor within 45 calendar days of the matter giving rise to the allegation of individual discrimination; or within 45 days of the date on which the agent would reasonably have known of the matter.

c. An EEO Counselor will notify the EEO Officer immediately after being contacted concerning a class complaint, notify the CEO, and make an appropriate inquiry into the charge in an attempt to resolve the problem informally.

d. The EEO Counselor shall also:

(1) Advise the aggrieved person(s) of the discrimination complaint procedures, of his or her right to representation throughout the complaint process, and of the agent's right to anonymity only during the pre-complaint process;

(2) Make whatever inquiry is believed necessary;

(3) Make an attempt at informal resolution through

discussion with the class agent and appropriate officials;

(4) Counsel the aggrieved person(s) concerning the issues involved and the necessity of satisfying the class complaint requirements in paragraph (1.a.) above for the complaint to be accepted for processing;

(5) Inform the EEO Officer and other appropriate officials when corrective action is believed necessary;

(6) Keep a record of all counseling activities; and

(7) Summarize actions and advise in writing both the EEO Officer and the aggrieved person(s) concerning the issues, policies, or procedures involved in the complaint and the efforts made to resolve them.

e. The EEO Counselor will conduct a final interview, and terminate counseling with the aggrieved person(s) not later than 30 calendar days after the date on which the allegation of discrimination was called to the EEO Counselor's attention. During the final interview, the EEO Counselor will inform the aggrieved person(s) in writing that counseling is terminated, that they have the right to file a class complaint of discrimination with the appropriate agency officials, and that they have a duty to ensure that the agency is immediately informed if legal representation is obtained.

f. The EEO Counselor will inform the aggrieved person(s) that a complaint must be submitted in writing by the agent or his or her representative within 15 calendar days after the agent's receipt of the Notice of Right to File a Class Complaint from the EEO Counselor. Complaints may be filed with the Director of the Federal Bureau of Prisons, the EEO Officer, or the Director of EEO for the Department of Justice.

g. The EEO Counselor will in no way attempt to restrain the aggrieved person(s) from filing a complaint nor encourage the person to file a complaint and will not reveal the identity of an aggrieved person(s) during the period of consultation, except when authorized to do so by the aggrieved person(s).

h. The Federal Bureau of Prisons will ensure that EEO Counselors receive the full cooperation of all employees and that they are free from restraint, harassment, and reprisal. EEO Counselors, in their official capacity, will have access to personnel and other records pertinent to the complaint. Pursuant to 5 U.S.C. § 552a(b)(1), such access does not constitute an unwarranted invasion of privacy.

i. Any corrective action taken as a result of informal resolution will be consistent with law, Executive Order, OPM, EEOC, or Federal Bureau of Prisons regulations, rules, and policies.

j. The formal complaint will set forth specifically and in

detail:

(1) A description of the personnel management policy or practice giving rise to the complaint; and

(2) A description of the resulting personnel action or matter adversely affecting the agent.

k. The complaint must be filed not later than 15 calendar days after the agent's receipt of the notice of the right to file a complaint.

l. Within 30 calendar days of the Bureau's receipt of a complaint, the EEO Officer shall forward the complaint, along with a copy of the EEO Counselor's report and other information pertaining to timeliness or other relevant circumstances related to the complaint, to the EEOC for certification of the class. The Commission assigns the complaint to an Administrative Judge. The remainder of the regulations for processing class action complaints of discrimination with the EEOC may be found at 29 C.F.R. § 1614.204.

CHAPTER 5

DISABILITY DISCRIMINATION COMPLAINTS INVOLVING PROGRAMS OR ACTIVITIES CONDUCTED BY THE DEPARTMENT OF JUSTICE

1. COVERAGE

a. Section 504 of the Rehabilitation Act of 1973, as amended, prohibits discrimination on the basis of a physical or mental disability in all programs or activities conducted by Executive Branch agencies, including the Federal Bureau of Prisons, and the Postal Service. Thus, no qualified disabled person will, on the basis of his or her disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity the Bureau conducts.

b. The Bureau will make available to employees, applicants, inmates, visitors, other participants in or beneficiaries of the Bureau's programs, and other interested persons information regarding the provisions of 28 C.F.R. Part 39, which prohibit discrimination because of disability in programs or activities the Bureau conducts.

c. No qualified disabled individual will be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity the Bureau conducts, because the Bureau's facilities are inaccessible to or unusable by disabled persons. Furthermore, the Bureau will operate each program or activity at existing facilities, when viewed in their entirety, so that the programs or activities are readily accessible to and usable by disabled individuals.

2. COMPLIANCE PROCEDURES

a. Any person who believes that he or she has been subjected to discrimination covered by this section may, by him or herself or by his or her representative, file a complaint with the Bureau's EEO Officer. However, inmates who allege disability discrimination by the Bureau must first exhaust the Bureau's Administrative Remedy Procedure as set forth in 28 C.F.R. § 39.170 (d)(1)(ii).

b. Complaints from employees and applicants will be processed under the procedures in Chapters 2, 3, and 4 of this Manual.

c. All complaints filed under the procedures in this Chapter must be filed within 180 days of the alleged act of discrimination, except for complaints which are filed by inmates, and those must be filed within 180 days of the Bureau's final

administrative decision under the administrative remedy procedure.

d. Complaints may be delivered or mailed to the Attorney General, the Assistant Attorney General for Administration, or Bureau officials. Complaints shall be sent to the Director for Equal Employment Opportunity, Department of Justice, 10th Street and Pennsylvania Avenue, N.W., Room 1232, Washington, D.C. 20530.

e. EEO Officers in components of the Department, including the Federal Bureau of Prisons, process complaints filed under these compliance procedures.

f. The Director of EEO or the EEO Officer will promptly send a copy of the complaint, deleting the name of the complainant, to the Architectural and Transportation Barriers Compliance Board, if the complaint alleges that any Bureau facility is not readily accessible to and usable by disabled persons.

g. The EEO Officer will accept a complete complaint which is filed in accordance with these procedures, and inform the complainant and management of receipt of the complaint. If the EEO Officer receives a complaint which is not complete, he or she will notify the complainant, within 30 days of the receipt of the incomplete complaint, that additional information is needed. If the complainant fails to complete the complaint within 30 days of receipt of this notice, the complaint will be dismissed without prejudice.

h. Within 180 days of receipt of the complaint, the EEO Officer will assign an investigator to investigate the complaint, complete the investigation, attempt informal resolution, and, if no informal resolution is achieved, issue a letter of findings. Bureau employees are required to cooperate in the investigation and in any attempted resolution of complaints. Employees who participate in the investigation will do so as part of their official duties and during the course of regular duty hours.

i. The EEO Officer will furnish the complainant and the responsible management officials with a copy of the investigative report promptly after receiving it from the investigator and provide the complainant and respondent with an opportunity to resolve the complaint informally. If a complaint is resolved informally, the terms of the agreement shall be put in writing and made a part of the complaint file, with a copy of the agreement provided to the complainant and the respondent. The written agreement may include a finding on the issue of discrimination and should describe any corrective action to which the complainant and respondent have agreed.

j. If an informal resolution of the complaint is not reached, the EEO Officer will, within 180 days of receiving the complete

complaint, notify the complainant and the respondent of the results of the investigation in a letter sent by certified mail, return receipt requested, containing:

- (1) Findings of fact and conclusions of law;
- (2) A description of a remedy for each violation found;
- (3) A notice of the right of both the complainant and the respondent to appeal to the Complaint Adjudication Officer; and
- (4) A notice of the right of both the complainant and respondent to request a hearing before an Administrative Law Judge from the Department of Justice.

k. The complainant or Bureau management officials may file a Notice of Appeal to the Complaint Adjudication Officer, with or without a request for hearing, with the EEO Officer within 30 days of receiving the letter of findings.

l. If one party files a timely appeal, but does not request a hearing, the other party may file a written appeal for a hearing within 30 days of receiving the letter of findings or within 10 days of receiving notice of the other party's appeal, whichever is later. If neither party requests a hearing, the EEO Officer shall promptly transmit the notice of appeal and the investigative report to the Complaint Adjudication Officer.

m. If neither party files a written appeal, with or without a hearing, within 30 days of receipt of the letter of findings, the Director of EEO for the Department of Justice, or his or her designee, will certify that the letter of findings is the final agency decision on the complaint at the expiration of the 30 days.

n. Procedures for appeals for a hearing or to the Complaint Adjudication Officer may be found at 28 C.F.R. § 39.170(j)-(l).

CHAPTER 6

SEXUAL HARASSMENT

1. POLICY

It is the policy of the Federal Bureau of Prisons to prohibit sexual harassment at any Bureau facility. Bureau employees will work in an environment independent from sexually harassing conduct and intimidation from any employee, regardless of their position.

Section 703 of Title VII of the Civil Rights Act of 1964, as amended, considers harassment on the basis of sex as a violation of that law. Agency responsibility regarding the management of sexual harassment, when it occurs, is also referred to in 29 CFR Part 1604. On June 30, 1993, EEOC issued Management Directive Number 560.005 to all federal agencies, transmitting guidelines on the Prevention and Elimination of Sexual Harassment in the Workplace. On April 25, 1994, the Attorney General directed all agencies in the Department of Justice to establish a comprehensive Sexual Harassment Prevention Program (Attachment A). Issuance of this Program Statement is consistent with guidance from EEOC and the Department regarding the prevention of sexual harassment.

2. PURPOSE AND SCOPE

To reaffirm the Bureau's position prohibiting sexual harassment and to inform all Federal Bureau of Prisons employees (including Federal Prison Industries and the National Institute of Corrections) that not only is sexual harassment a violation of Federal Bureau of Prisons policy, but it is also a violation of Title VII of the Civil Rights Act. This chapter of the Program Statement defines sexual harassment, summarizes the Bureau's policy and explains the avenues of relief for victims. This policy pertains to all organizational levels and units within the responsibility of the Director of the Federal Bureau of Prisons.

3. DEFINITION

Harassment on the basis of sex is a violation of Title VII of the Civil Rights Act of 1964, as amended. The Equal Employment Opportunity Commission defines sexual harassment in 29 CFR § 1604.11, as:

"Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

a. Submission to such conduct is made either explicitly or implicitly, a term or condition of an individual's employment;

b. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or

c. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment."

4. RESPONSIBILITIES

a. All employees will be informed that sexual harassment is prohibited conduct which will not be tolerated, and appropriate corrective action will be taken against persons who engage in sexual harassment.

b. All middle managers and supervisors will discuss this Program Statement with all current employees and each new employee under their supervision, and encourage employees to report conduct which they believe to be sexual harassment to a management official to ensure that there is no sexually harassing conduct in their areas of responsibility.

c. All Federal Women's Program Managers, Hispanic Employment Program Managers, Black Affairs Program Managers, Selective Placement Program Managers, EEO Counselors, or other EEO Officials contacted will, upon receiving any written allegations/complaints of sexual harassment, notify their CEO.

d. Management officials will notify the EEO Officer whenever they receive official notification of a complaint of sexual harassment.

5. COMPLAINTS

* a. Notification. Employees who feel they are victims of sexual harassment by another employee have the option of first notifying the harasser that the behavior is unwelcome. If the conduct continues, or when the victim feels uncomfortable confronting the harasser, the employee/victim may notify a management official, EEO Counselor, or contact person with the Sexual Harassment Prevention Program.

b. Relief. The employee may seek relief by either notifying the contact person for the Sexual Harassment Prevention Plan, pursuing the EEO Complaint process, or using the Negotiated Grievance process (if covered by that agreement) or the Agency Grievance procedure. Employees should be informed that if they choose to use the EEO Complaint process, they must do so within 45 days of the action(s) of which they are complaining. (See Chapter 2, Section 1.a. of this Manual.) If the employee is the subject of an adverse action appealable to the MSPB, he or she may raise the allegation of sexual harassment in any appeal to the MSPB. CEOs may, at their discretion, notify the Office of Internal Affairs and request that an investigation be conducted.*

c. Complaints. Complaints of discrimination alleging sexual harassment may be made by memoranda to the CEO or after completing EEO counseling. A complaint form will be issued to the employee on the 30th day of counseling by the EEO Counselor. The complaint of discrimination form may be submitted to the Director of the Federal Bureau of Prisons, the CEO, the Equal Employment Opportunity Officer, or the Federal Women's Program Manager. All allegations of sexual harassment shall be forwarded to the EEO Officer and investigated promptly by the EEO Office, in accordance with 29 C.F.R. Part 1614.

All persons deemed to be participants in sexual harassment shall be subjected to corrective action, including disciplinary or adverse action.

6. SEXUAL HARASSMENT TRAINING

All new employees should receive sexual harassment training before completing their probationary year. In an effort to prevent sexual harassment, all Federal Bureau of Prisons employees shall receive sexual harassment training each year. All CEOs will ensure that they and all employees under their supervision receive sexual harassment training.

7. SEXUAL HARASSMENT PREVENTION PLAN

At the Attorney General's direction, all agencies in the Department of Justice are to develop a Sexual Harassment Prevention Program (Attachment B). A copy of this plan is attached to and incorporated into this Program Statement (Attachment C).

a. Under this plan, the Director of the Federal Bureau of Prisons will appoint a sufficient number of persons to serve as points of contact for employees who feel they have experienced any form of sexual harassment.

b. Each Regional Director shall designate two collateral duty Contact Persons for each region, and a Contact Person and a Coordinator for the program will be designated in the Central Office.

c. Persons appointed as Contact Persons should be willing to serve in this role and possess the following characteristics: sensitive to the concerns of others; good communicators; tactful and flexible in their approaches to dealing with others. Appointments to these positions will reflect the diversity of each component. Both men and women shall be designated to serve in this capacity.

Contact Persons shall:

(1) Serve as points of contact for employees who believe that they have experienced or are experiencing incidents of sexual harassment. The contact may be in person, telephonic, or by written communication.

(2) Listen objectively to the employee's concerns and ensure the employee that an inquiry will be conducted quickly, impartially, and as discretely as possible.

(3) Inform the employee that this is an additional option for reporting incidents of sexual harassment. Inform the employee that this procedure is distinct from the EEO and grievance processes.

(4) Inform the employee that this process provides for an expedited corrective action approach designed to stop sexually harassing behavior. Employees must be informed that in addition to working with the contact person, they may also wish to pursue their concerns through any of the other avenues of redress, such as the EEO complaint process, a union grievance, the Office of Internal Affairs, the Office of the Inspector General, etc.

(5) Advise the employee of the time requirements for filing an EEO complaint or union grievance, and that **use of this option does not substitute for the timely invocation of the EEO or grievance processes.**

(6) Advise the employee that the Contact Person shall initiate an inquiry within seven days of their initial contact and complete the inquiry within 30 calendar days. If necessary, and with the employee's written concurrence, the inquiry may be extended for an additional 15 calendar days.

(7) Advise the employee of what actions may occur as a result of the inquiry, including the potential for management to take appropriate disciplinary action against the alleged harasser if the allegations are substantiated, as well as their other avenues of redress, in accordance with Sections 7c (4) and (5) of this Chapter, if the Contact Person cannot resolve the employee's concerns.

(8) Assist with the presentation of training programs provided for managers, supervisors, and employees.

(9) Maintain an accurate system of record keeping on the number of contacts made by employees and the number of inquiries conducted.

(10) Issue periodic reports to the Coordinator and the Regional Director.

d. The Coordinator shall:

(1) Coordinate the efforts of all designated Contact Persons and develop and maintain an accurate system of records on the contacts made with each Contact Person.

(2) Provide advice and technical assistance to the Contact Persons.

(3) Issue periodic reports to the Assistant Director for Human Resource Management and to the Director on the reports the Contact Persons submit.

e. The EEO Officer shall:

(1) Work with the Management and Specialty Training Center to develop a training program for Contact Persons and Managers and Supervisors.

(2) Conduct training for Contact Persons.

(3) Provide technical assistance to the Coordinator and the Contact Persons.

f. The Department of Justice trains the planning Coordinator and the EEO Officer and his or her staff. The EEO Officer shall provide training for all the designated Contact Persons to enable them to carry out their responsibilities successfully.

**Office of the Attorney General
Washington, D.C. 20530**

April 25, 1994

MEMORANDUM FOR HEADS OF DEPARTMENT COMPONENTS

FROM: THE ATTORNEY GENERAL {\s\ Janet Reno\}

SUBJECT: Comprehensive Program for Prevention of
Sexual Harassment

In my memorandum of June 29, 1993, I outlined the Department's policy with respect to prevention of sexual harassment in the workplace. I stated that I expect all employees to conduct themselves in a professional manner at all times, and not to engage in conduct that is illegal or otherwise violates this policy.

I also stated that each manager and supervisor will be held accountable for what goes on in his/her organization. I emphasized the need for managers to play a lead role in assuring that steps are taken to guarantee that every employee is treated with dignity and respect. Each Component Head should issue guidance personally to employees on this matter.

Sexual harassment is a serious problem and must be dealt with in a serious and deliberate manner. Employees must not be subjected to an "abusive work environment," but must be provided an atmosphere that will allow them to perform their jobs without unnecessary disruptions or distractions.

I believe that we must be aggressive in our attempts to prevent sexual harassment, and that our managers must take a primary responsibility for ensuring that our workplace is free of harassment. Therefore, I am establishing several key management initiatives, including a procedure outside the existing EEO and grievance processes, that will enhance our existing program efforts for preventing and addressing incidents of sexual harassment. Those components which are organized are reminded that they must notify their unions and give them an opportunity to negotiate regarding this matter before implementing.

Effective immediately, the head of each bureau and major operating component shall:

I. APPOINT A SUFFICIENT NUMBER OF PERSONS TO SERVE AS POINTS OF CONTACT FOR EMPLOYEES WHO FEEL THAT THEY HAVE EXPERIENCED ANY FORM OF SEXUAL HARASSMENT.

- Component Heads shall appoint a number of collateral duty contact persons appropriate for the size and structure of their organization, keeping in mind that they need to appoint persons both in headquarters and strategic field locations, e.g., regions, sectors, major field offices, etc.
- Component Heads must ensure that contact persons are located at a level in the organization that will allow them to effectively administer their duties and responsibilities as they pertain to this initiative.
- Appointments to these positions shall reflect the diversity of each component.
- Persons appointed should be willing to serve in this role and possess the following characteristics: sensitive to the concerns of others; good communicators; tactful and flexible in their approaches to dealing with others.
- Component Heads must be deliberate in appointing such persons since a situation involving sexual harassment is often highly emotional and must be handled by a sensitive, knowledgeable individual. It is especially important that persons of both sexes be designated to serve in this capacity.
- Component Heads shall ensure that contact persons are trained so that they may successfully carry out their responsibilities. The JMD will develop a training module and conduct training for contact persons in the Offices, Boards and Divisions. Bureau EEO Officers will provide similar training for persons designated in

the various components.

- Component Heads will widely publicize the names, office addresses, and telephone numbers of the individuals appointed. Their names should also be published in various component publications, e.g. newsletters, so that employees are fully aware of the identity of these persons. Rosters should be kept up to date and replacements appointed immediately when incumbents are no longer able to serve in this role.
- Component Heads must ensure that their network of contact persons is established and operational within forty-five (45) days of receipt of this memorandum. Each shall inform me of the status of their efforts in carrying out this important initiative.
- Persons appointed to this role shall:
 - serve as points of contact for employees who have experienced or are experiencing incidents of sexual harassment. The contact may be in person, telephonic or by written communication.
 - listen objectively to the employee's concerns and ensure the employee that an inquiry will be conducted quickly, impartially, and as discretely as possible.
 - inform employees that this is an additional option for reporting incidents of sexual harassment. Inform employees that this procedure is distinct from the EEO and grievance processes -- that this process provides for an expedited corrective action approach designed to stop sexually harassing behavior. Employees must be informed that in addition to working with the contact person, they may also wish to pursue their concerns through any of the other avenues of redress, e.g. EEO, union grievance, OIG, OPR, etc.

- advise the employee of the time requirements for filing an EEO complaint or union grievance, and that use of this option does not substitute for the timely invocation of the EEO or grievance process.
- advise the employee that an inquiry shall be initiated within seven days of their initial contact and completed within 30 calendar days. If necessary, and with the written concurrence of the employee, the inquiry may be extended for an additional 15 calendar days.
- advise the employee what actions may occur as a result of the inquiry, including the potential for management to take appropriate disciplinary action against the alleged harasser if the allegations are substantiated, as well as what may occur if the allegations cannot be substantiated.
- assist with development and presentation of training programs provided for managers, supervisors, and employees.
- maintain an accurate system of record keeping on the number of contacts made by employees and the number of inquiries conducted.
- issue periodic reports to the component head on the level of activity in the organization.

Additional information will be provided to contact persons as part of their formal training.

I believe that by appointing contact persons throughout the Department who are immediately accessible to all employees, it will create an environment which makes it easier for individuals who feel sexually harassed to report such behavior. It will also enable managers to respond to these situations in a timely and responsible manner.

II. BUREAUS SHOULD ALREADY HAVE PLANS FOR PREVENTION OF SEXUAL HARASSMENT THAT CONFORM TO EEOC AND DOJ GUIDELINES. ALL OTHER DOJ COMPONENTS SHOULD DEVELOP PLANS. ALL PLANS SHOULD INCLUDE, BUT NOT BE LIMITED TO THE FOLLOWING:

- A policy statement signed by the Head of the Component.
- A description of specific steps taken to inform employees that complaints of sexual harassment are cognizable under Title VII, and the avenues of redress available to them, including formal and informal avenues. The informal procedures established via this memorandum should be included in the plan.
- A listing of training or other programs designed to inform supervisors and employees of their responsibilities to discourage explicit and implicit unwelcome advances or physical conduct of a sexual nature in order to maintain a workplace free of sexual harassment.
- A description of procedures to disseminate agency code of conduct or other policy directives/materials designed to curtail inappropriate conduct.
- A description of methods to ensure accountability within the component for maintaining a workplace free of sexual harassment.
- Any other initiatives undertaken to educate employees/supervisors of their responsibilities.

I have attached a copy of a Plan Development Guide prepared by the JMD which will be useful in reviewing and developing your plans. You should consult the EEO Staff, JMD or EEO Officer in your component for additional technical assistance.

I have asked Stephen Colgate, Assistant Attorney General for Administration, to review and assess the adequacy of each component's plan and to report to me if further action is necessary. You should submit your plan to Mr. Colgate within 60 days of receipt of this notice.

Further, to ensure that we give the highest level of priority to this subject, I have requested that the JMD take the lead in:

- Establishing a DOJ Advisory Committee on Prevention of Sexual Harassment.
- Developing and Administering a DOJ Sexual Harassment Survey.
- Developing and Disseminating a DOJ Information Brochure for all Employees.
- Establishing a centralized reporting system so that complaints of sexual harassment may be easily tracked and monitored, including a method to track types of disciplinary action taken against individuals found to have engaged in sexually harassing behavior.
- Prepare periodic reports for my review that provides information on Department initiatives in this area. Components will be required to provide quarterly status reports to JMD on their efforts.

The Department has initiated a number of other aggressive actions to prevent and eradicate sexual harassment from the workplace. This includes the development of a training video featuring two attorneys of the Civil Division who are regarded as experts in this area. The video, " It's Against the Law: Sexual Harassment in the Workplace," will be available for use by all Justice Components. Each component will be required to schedule mandatory viewings of the video for every employee, and subsequently, to certify that everyone has seen the video.

- The video will be shown at regularly scheduled intervals on the JusticeVision Network for employees in the Washington, D.C. area
- Viewing will be available in Conference Room B, Main Justice, for employees without access to JusticeVision.
- Organizations will schedule mandatory viewings for employees in their conference or meeting rooms, and ensure that copies are

provided for viewing in all field locations.

- The video will be required viewing at all DOJ supervisory and managerial training programs.

These multiple efforts I believe will prove to be a significant step toward ensuring that the Department addresses this issue in a responsible manner. I am eager to move forward toward implementing these actions. I am counting on each of you, as well as our employees and managers, to assist me in accomplishing these important objectives.

Attachment

U.S. Department of Justice
Justice Management Division

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GUIDE FOR DEVELOPING PLANS FOR
PREVENTION OF SEXUAL HARASSMENT
IN THE WORKPLACE

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INTRODUCTION

In the years since the issuance of the EEOC Guidelines on Discrimination Because of Sex, legal and human resource management officials agree that prevention is the best tool for combating sexual harassment. Authorities insist that a proactive approach for dealing with sexual harassment and an effective system for addressing allegations of sexual harassment are the keys to a productive work environment.

The EEOC encourages employers to:

take all steps necessary to prevent sexual harassment from occurring, such as affirmatively raising the subject, expressing strong disapproval, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment under Title VII, and developing methods to sensitize all concerned.

A 1988 Merit Systems Protection Board study on sexual harassment found that agencies and employees alike agreed that more needed to be done to prevent harassment from occurring, and to impose sanctions against individuals who are found to engage in sexually harassing behavior.

In sum, employees stated that the following actions should be undertaken by management to demonstrate commitment to the problem.

- Establishing and publicizing policies prohibiting sexual harassment;
- Providing swift and thorough investigation of complaints;
- Enforcing penalties against managers who allow sexual harassment to continue;
- Enforcing penalties against sexual harassers;
- Publicizing availability of formal and informal complaint channels;
- Providing counseling services for victims of sexual harassment;
- Providing awareness training for employees and;

- o Providing awareness training for managers and human resource management officials.

Once an agency establishes these elements as viable parts of its program, there is great possibility that employees and managers alike will feel more comfortable with their work environment.

I hope that you will find this Guide useful in developing and assessing your efforts in this important program area.

 \s\
Stephen R. Colgate
Assistant Attorney General
for Administration

 April 13. 1994
Date

BACKGROUND

Harassment on the basis of sex is a violation of Section 703 of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000e-2. In 1980, the Equal Employment opportunity Commission (EEOC) issued Guidelines on Discrimination Because of Sex (29 CFR 1604.11) that describes sexual harassment as follows:

"Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

(1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) a submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual's work, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment."

PROGRAM ELEMENTS

The Merit Systems Protection Board, Equal Employment Opportunity Commission and other experts agree that agencies must continue to focus their attention on this very serious problem. The discussion that follows highlights the elements that comprise essential ingredients for an effective program for preventing sexual harassment and addressing it, if and when it does occur.

Agencies should follow this guide, as a minimum, for preparing plans that will be effective in reducing the incidence of sexual harassment in the workplace. While it may not be possible to eliminate all behaviors that are considered sexually harassing, managers must make it known that such behavior will not be condoned or tolerated from any members of the organization.

This guide contains seven distinct program elements that may be used by components in assessing the current status of your program and in developing plans for prevention of sexual harassment.

1. Management Commitment/Policy
2. Training/Employee Awareness
3. Avenues of Redress
4. Enforcement
5. Additional Measures to Identify Potential/Unreported Sexual Harassment Situations
6. Monitoring
7. Reporting

MANAGEMENT COMMITMENT

Component heads will be held accountable for enforcing the Department's policy prohibiting sexual harassment in the workplace. Managers must:

- Set the example by their own behavior;
- Communicate the Department's policy and the component's policy to employees and supervisors at all levels;
- Annually evaluate, modify and reissue their own policy statement on prevention of sexual harassment. At a minimum, the statement must:
 - Make it clear that sexual harassment is against the law and will not be tolerated;
 - Ensure that the statement defines the various behaviors that constitute sexual harassment;
 - State that appropriate action will be taken to deal with persons who engage in sexual harassment;
 - Make it clear that employees who report instances of sexual harassment will be free from retaliation;
 - Ensure that every employee has a copy of the policy statement; and
 - Regularly discuss the subject in staff meetings and require that subordinate managers do likewise.

**COMPREHENSIVE TRAINING PROGRAM
FOR SUPERVISORS AND EMPLOYEES**

Component Heads must provide training for supervisors and employees at all levels of the organization. Training programs must be:

- Offered on a regular basis:
- Conducted by individuals who have indepth knowledge of the subject matter:
- Provided to new supervisors during supervisory training;
- Tailored to the organization in order to address specific and general concerns; and
- Offered in a variety of formats including but not limited to: classroom training, either as a separate course or part of other courses; mini-workshops, or brown-bag lectures, etc.

TRAINING FOR HUMAN RESOURCE MANAGERS/CONTACT PERSONS

Component Heads must ensure that persons working in the areas of EEO, employee relations, employee assistance, etc., are provided training so that they can effectively and efficiently advise victims and supervisors on matters regarding sexual harassment.

Components Heads must ensure that individuals who are appointed to serve as contact persons as prescribed by the Attorney General also receive sufficient training so that they may effectively discharge their duties and responsibilities.

EMPLOYEE AWARENESS

To ensure that employees and supervisors receive up to date information on a continuing basis, component heads must establish mechanisms and keep them in place, including:

- Utilizing print media to communicate message on an ongoing basis. This includes saturating the workplace with posters, flyers, articles in various component newsletters, as well as, use of automated mail/message systems, etc.
- Establishing resource libraries that contain books, videos, periodicals, articles, copies of court

decisions.

AVENUES OF REDRESS

Component Heads must ensure that employees are aware of the various avenues for redress that are available to them in the event that they feel they have been sexually harassed.

- Utilize informal mechanisms to address and resolve concerns at the earliest possible stage; the informal management procedure must be emphasized.
- Review the formal avenues of redress to determine if they are responsive to the needs of persons who feel that they have been sexually harassed.
- Publicize both informal and formal avenues to ensure that employees are fully aware of all of the alternatives available to them.
- Conduct periodic follow-up interviews with all parties involved in the settlement of both formal and informal complaints.

ENFORCEMENT

Management must take appropriate disciplinary action against those persons found to have engaged in sexually harassing behavior and against managers who allow such conduct to persist in their organizations.

- Managers should consult with appropriate agency advisors (employee and labor relation specialists) to ensure that disciplinary action is in accordance with established agency policies and procedures.
- Managers must be mindful of the need to take immediate action in those instances where persons are found to have engaged in sexually harassing behavior.

**ADDITIONAL MEASURES TO IDENTIFY POTENTIAL OR
UNREPORTED SEXUAL HARASSMENT SITUATIONS**

These additional measures will allow management to further assess the work environment to determine if problems relating to sexual harassment exist

- Exit Interviews
- Random and Periodic Inspection of Work Areas
- Employee Meetings
- Employee Attitude Surveys
- Suggestion Boxes
- Employee Hotlines

MONITORING

Components Heads should ensure that mechanisms are in place to monitor the organization's program efforts; to determine if initiatives are being carried out; and to determine if they are effective. Monitoring must be continuous and feedback provided to appropriate agency officials. Monitoring of the workplace can be done by:

- Supervisors/Managers
- Contact Persons
- Employees
- Human Resource Management Officials

REPORTING

Component Heads must comply with the reporting requirements outlined in the Attorney General's memorandum of April 25, 1994.

Additionally, each Component Head should require that subordinate managers report periodically on their efforts in implementing the Department's policy for preventing sexual harassment.

THE BUREAU OF PRISONS PLAN FOR THE
PREVENTION OF SEXUAL HARASSMENT
IN THE WORKPLACE

The purpose of this plan is to reaffirm the Federal Bureau of Prisons' policy on the prohibition of sexual harassment. Sexual harassment is considered to be a form of misconduct which interferes with work productivity and wrongfully deprives employees of the opportunity to work in an environment independent from unsolicited and unwelcome sexual overtones.

POLICY

It is the policy of the Federal Bureau of Prisons (Bureau) to prohibit sexual harassment at all Federal Bureau of Prisons facilities. Bureau employees shall work in an environment independent from sexually harassing behavior and/or conduct and intimidation from any employee regardless of their position.

BACKGROUND

Sexual harassment is a prohibited personnel practice and it is a violation of Title VII of the Civil Rights Act. The Equal Employment Opportunity Commission describes sexual harassment as:

"Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitutes sexual harassment when:

- a. Submission to such conduct is made either explicitly or implicitly a term or condition of employment;
- b. Submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting such individual's work, or;
- c. The conduct substantially interferes with an individual's work performance; or
- d. The conduct creates an intimidating, hostile, or offensive working environment."

TRAINING PROGRAM FOR SUPERVISORS AND EMPLOYEES

Training shall be provided to all Bureau employees on a regular basis. This training shall be provided to all new employees during Institution Familiarization as well as in two modules of the Introduction to Correctional Techniques course at the Federal Law Enforcement Training Center, Glynco, Georgia. Training shall also be provided to all new supervisors during supervisory training and to all new employees at all offices and facilities during new employee orientation. Annual Refresher Training at each office and facility shall also include a segment regarding sexual harassment. All Chief Executive Officers shall ensure that employees under their supervision receive sexual harassment training.

In an effort to implement the Sexual Harassment Prevention Plan, the Department of Justice developed a training module and they have trained the individuals selected as Coordinators. The EEO Officer for the Bureau will be responsible for providing training to all Contact Persons.

EMPLOYEE AWARENESS

The Bureau's EEO Office developed a poster, which is included, that should be placed in a location that is visually accessible to all employees. The Department of Justice issued a pamphlet entitled "Sexual Harassment in the Workplace It's Against the Law." Copies of the pamphlet can be obtained from the Department of Justice, EEO Staff.

The EEO Office maintains copies of recent court decisions regarding sexual harassment cases. The Management and Specialty Training Center has a wide variety of videos that may be ordered for purposes of training employees.

The Introductory to Correctional Techniques training has a presentation on sexual harassment during the personnel orientation segment. Sections pertaining to sexual harassment can also be found in the Bureau's Employee Handbook and the Standards of Employee Conduct and Responsibility (Standards of Conduct).

MANAGEMENT COMMITMENT

In an effort to eliminate incidents of sexual harassment, Management officials will be held accountable for the actions of its employees. Therefore, managers are expected to set the tone for their employees by providing examples of non-offensive behavior.

Management officials shall inform all employees that sexual harassment is prohibited conduct that will not be tolerated. Managers are responsible for taking corrective action in instances where allegations of sexual harassment are sustained.

The Federal Bureau of Prisons will not tolerate any acts of Sexual harassment against its employees.

In accordance with the Standards of Conduct, disciplinary action will be taken against any employee found to have sexually harassed another employee or applicant, including sexual harassment.

PROCEDURES TO DISSEMINATE AGENCY STANDARDS OF CONDUCT
OR OTHER POLICY DIRECTIVES/MATERIALS
DESIGNED TO CURTAIL INAPPROPRIATE CONDUCT

- a. Each new employee, contractor and volunteer receives the Standards of Conduct from the local Human Resource Manager and must sign a form acknowledging receipt.
- b. A form indicating that an employee has received the Standards of Conduct is filed on the left side of the Official Personnel Folder of the employee.
- c. Employee Development Managers are responsible for ensuring that employees and supervisors are trained annually in the Standards of Conduct. This training can be tracked by the code number given to each class. Training in this area includes:
 - (1) Institution Familiarization and New Employee Orientation. This training includes at least a one-half hour segment on the Standards of Conduct and is presented to all new employees early in their employment with the Bureau.
 - (2) Annual Refresher Training is mandatory for all employees and the Standards of Conduct is a core subject.

- (3) Introduction to Correctional Techniques includes a segment on the Standards of Conduct. This training is mandatory for all employees who are assigned to correctional facilities.

- d. All employees receive the Federal Bureau of Prisons' Employee Handbook. This handbook includes the Bureau's position on sexual harassment. Information on sexual harassment is found in the Equal Employment Opportunity and the Standards of Conduct section of this publication.

METHODS TO ENSURE ACCOUNTABILITY WITHIN
THE COMPONENT FOR MAINTAINING A WORKPLACE FREE
OF SEXUAL HARASSMENT

- a. The Bureau's Standards of Conduct includes a section describing penalties that can be assessed for misconduct including discrimination. Sexual harassment is discrimination because of sex.
- b. The performance evaluation standards for all supervisors and managers include elements for assessing the performance in the area of equal employment opportunity, including sexual harassment.



FEDERAL BUREAU OF PRISONS
SEXUAL HARASSMENT PREVENTION PLAN

BUREAU OF PRISONS COMMITMENT REGARDING SEXUAL HARASSMENT

THE BUREAU TAKES ALL ALLEGATIONS OF SEXUAL HARASSMENT SERIOUSLY. SEXUAL HARASSMENT WILL NOT BE TOLERATED IN THE BUREAU OF PRISONS.

IF YOU FEEL THAT YOU HAVE BEEN SUBJECTED TO ANY FORM OF SEXUAL HARASSMENT YOU HAVE THE RIGHT TO NOTIFY A CONTACT PERSON LOCATED AT YOUR REGIONAL OFFICE OR INSTITUTION.

YOUR CONTACT PERSON IS:

AND YOU MAY REACH THEM AT

YOUR CONTACT WITH THE CONTACT PERSON MAY BE IN PERSON, TELEPHONICALLY OR BY WRITTEN COMMUNICATION.

DISCIPLINARY ACTION WILL BE TAKEN AGAINST ANY EMPLOYEE FOUND TO HAVE SEXUALLY HARASSED ANOTHER EMPLOYEE.